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on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Tenth periodic reports of States Parties due in 1995

Addendum

ZAIRE*

[10 March 1996]

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* The present document constitutes the tenth period report, due on 21 May 1995.

The third, fourth, fifth, sixth, seventh, eighth and ninth periodic reports of Zaire, combined in a single document, are contained in document CERD/C/237/Add.2. It has not yet been considered by the Committee.

The second periodic report of Zaire and the summary records of the meetings at which the Committee considered that report are contained in documents CERD/C/46/Add.4 and CERD/C/SR.486-487.

I. GENERAL

1. As stated in the previous reports, Zaire is a country in central Africa, situated on either side of the equator. It has an area of approximately 2,400,000 km^2 and an estimated population of some 45 million.

2. Zaire has more than 250 tribes, of which the following are the largest: the Sudanese, near the north-western borders; the Nilotic peoples, near the north-eastern borders; the Bantus and semi-Bantus, who occupy the rest of the territory; and a tiny minority of Pygmies.

3. An independent, sovereign, indivisible and democratic, as well as social and secular State, Zaire has 11 regions, including the city of Kinshasa.

4. Since the submission of the previous report, a provisional Constitution, called the "Acte constutionnel de la transition" (Constitutional Act of the Transition period), was adopted and promulgated on 9 April 1994. That Act and the ordinary laws comprise the general legal framework within which human rights are protected. This is complemented by the courts and tribunals that are called upon to punish various violations of human rights, as well as by the National Commission for the Promotion of Human Rights, established on 8 May 1995 by Decree No. 018.

5. Since society is based on an egalitarian regime, article 11 of the Constitutional Act is worded as follows:

> "All Zairians are equal before the law and are entitled to equal protection by the law.
>
> No Zairian may, in matters of education or access to the civil service or in any other matter, be the object of discriminatory treatment, whether as a result of a law or of an act of the executive, by reason of his religion, racial or ethnic origin, sex, place of birth, place of residence or political beliefs."

6. Under article 34 of the Constitutional Act, foreigners are entitled to the same protection of person and property as Zairians. Furthermore, article 115 states: "In order to promote African unity, the Republic may conclude treaties and agreements of association entailing a partial relinquishment of its sovereignty."

II. INFORMATION IN RELATION TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

7. The following information demonstrates that Zaire began to enact legislation on the elimination of all forms of racial discrimination prior to the adoption of the Convention. In addition to the above-mentioned constitutional principles, the following examples may be cited:

Article 17 of the Constitution, which guarantees to all individuals freedom of thought, conscience and religion;

Article 27 of the Constitution, which proclaims the equality of all Zairians in law and in dignity, stipulates that any act that grants privileges to nationals or limits their rights by reason of their ethnic, tribal or regional origin, political or philosophical opinion, religion or sex is contrary to the present law and is punishable by the penalties envisaged by law. The same applies to any act of provocation or any attitude intended to incite violence or hatred by reason of political, philosophical, ethnic, regional or religious adherence, or intended to sow discord among nationals.

8. Because Zaire is a secular State comprising a mosaic of tribes and ethnic groups, it has built its unity around the principle of unity in diversity. The authorities cannot therefore remain indifferent to any act that might compromise that equilibrium.

9. As regards ordinary legislation, the following three instruments, among many others, enable racial discrimination to be combated:

Ordinance-Law No. 25/131 of 25 March 1960, on the suppression of manifestations of racism or religious intolerance, makes the placing of graffiti on walls or in other places, the wearing of emblems, and gestures, words or writings liable to cause, maintain or exacerbate tension between races, ethnic groups or faiths, punishable offences;

The Decree of 13 June 1960, on discrimination in shops and other public places, prohibits maintaining, setting up or causing to be maintained or set up any separate installations, such as sales windows, entrances or counters, etc., reserved for a particular race or ethnic group. The same text forbids maintaining, installing or causing to be maintained or installed inscriptions, illustrations or signs of any kind indicating the existence of separate installations as referred to in the foregoing. Penalties are imposed for violating the prohibition;

Ordinance-Law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, punishes the author of any word, gesture, written, pictorial or emblematic form manifesting racial, ethnic, tribal or regional aversion or hatred.

10. This legislation, which predates the Convention, puts Zaire in the forefront of countries opposed to racial discrimination in all its forms.

11. Although multiple nationality is not possible, Zairian legislation on nationality is generally liberal (arts. 9-55 of the Family Code Act No. 87-010 of 1 August 1987):

Its acceptance of jus soli enables non-Zairians by blood to acquire Zairian nationality.

Other than jus soli, Zairian nationality is conferred upon foreigners by naturalization, adoption and choice, provided that certain conditions are met.

12. Additional proof of our willingness to eliminate racial discrimination is to be found in the legislature's concern for avoiding statelessness.

13. Any child born in Zaire, or found in Zaire, whose parents are either unknown or without nationality automatically acquires Zairian nationality (art. 7 of Act No. 87-010 of 1 August 1987).

14. Furthermore, the techniques of jus soli, adoption, choice or naturalization permit the stateless person to become a Zairian (arts. 7, 23-25, 17-22 and 10-17 of Act No. 87-010 of 1 August 1987).

15. Generally speaking, Zairians are a warm people who maintain excellent relations with the nationals of other countries. Their hospitality is legendary. Zairian laws generally look kindly upon foreign nationals and those who have acquired Zairian nationality.

16. Multiracial, integrationist organizations and movements are encouraged. There are a number of programmes for cultural exchanges between Zaire and several other countries.

17. In the economic field, it should be noted that Zairianization measures that had discouraged foreign free enterprise were abolished by Act No. 77/027 of 17 November 1977, which provides for a general retransfer of Zairianized or expropriated property.

18. Under the terms of the Act, foreigners may engage in commerce, either on their own or in cooperation with nationals.

19. Our educational policy consists in giving everyone the same opportunities. As stated above, under article 11 of the Constitutional Act (art. 11 of the Constitution), "No Zairian may, in matters of education or access to the civil service or in any other matter, be the object of discriminatory treatment, whether as a result of a law or of an act of the executive, by reason of his religion, racial or ethnic origin, sex, place of birth, place of residence or political beliefs."

20. The last clause of article 20 of the Constitutional Act stipulates that the care and education to be given to children and parents constitute a right for children and a duty for parents, which they exercise with the help of the State.

21. Article 21 provides for education by means of a national system that includes State schools and approved private schools under State supervision.

22. The State endeavours to eliminate illiteracy through primary education, secondary and professional education, higher and university education and adult literacy programmes.

23. In devising government policies, account has always been taken of the fact that the Zairian people consists of different ethnic groups. The central and regional authorities have always been attentive to the pluriethnic nature

of Zairian society. Concern for minority groups and for pluriethnicity has always been a part of Zairian policy, even before the country became independent.

24. Constituting 6 provinces at the time of independence, Zaire is currently composed of 11 provinces, including the city of Kinshasa. The reasons for this are extremely simple: this division makes it easier to determine and deal with the multiple needs of each province. It also favours development and progress, in so far as it permits problems to be tackled at the source. Today, public opinion as a whole is aware of the development and progress of communities. The communities in turn feel responsible for the general welfare.

Article 3

25. As stated above, Zaire continues to be in the forefront of the struggle against racism and apartheid. Some of the United Nations sanctions against South Africa have been lifted, and economic and other relations with that country are gradually returning to normal.

26. Within the framework of the struggle against racial segregation and apartheid, Zaire provided financial and other forms of assistance to the Namibian liberation movement, particularly the South West Africa People's Organization (SWAPO), prior to Namibia's independence, and to the African National Congress of South Africa (ANC).

Article 4

27. With regard to article 4, reference should be made to the information provided earlier on article 2.

28. Based on the constitutional principles that proclaim equality before the law and prohibit discrimination in all its forms:

Ordinance-Law No. 25/131 of 25 March 1960 makes the placing of graffiti on walls or in other places, the wearing of emblems and gestures, words or writings liable to cause, maintain or exacerbate tension between races, ethnic groups or faiths, punishable by imprisonment for a term of one month to one year and/or a fine not exceeding 3,000 zaires;

The Decree of 13 June 1960 prohibits maintaining, setting up or causing to be maintained or set up, in shops and other public places, any separate installations, such as sales windows, entrances or counters, etc., reserved for a particular race or ethnic group (art. 1). It also forbids maintaining, installing or causing to be maintained or installed inscriptions, illustrations or signs of any kind indicating the existence of separate installations as referred to in article 1 (art. 2). Violation of these provisions is punishable by imprisonment for a term not exceeding two months and/or a fine not exceeding 5,000 zaires (art. 3); repeat offences may lead to closure of the establishment for a period not exceeding two months (art. 4).

29. Ordinance-Law No. 66/342 of 7 June 1966, on the suppression of racism and tribalism:

This law punishes the author of any word, gesture, written, pictorial, emblematic or any other form manifesting racial, ethnic, tribal or regional aversion or hatred, or the author of any act liable to arouse such aversion or hatred, with a term of imprisonment of one month to two years and/or a fine of 50,000 to 100,000 zaires. If the offender is a person vested with public authority who has committed the offence while exercising his functions, the minimum term of imprisonment is six months and the minimum fine 5,000 zaires. If the offence has given rise to a breakdown of public order, serious disturbances, a secessionist movement or a rebellion, the offender is liable to life imprisonment (art. 1).

The Law prohibits and automatically dissolves tribal associations that are political in nature (art. 3). The same applies to societies, clubs, associations or groups whose real purpose activity or actions are motivated by racial, ethnic, tribal or regional discrimination (art. 3).

Those who (i) participate in maintaining a society, club, association or group which has been dissolved under article 3 of the Law or (ii) for any reason assume or continue to assume the leadership or management of the type of association referred to in article 4, shall be punished by a prison term of one month to two years and/or a fine of 500 to 100,000 zaires (art. 5).

Anyone who, in the exercise of his functions, has acquired knowledge of the commission of an act prohibited under article 1 or article 5 and who does not report it to the judicial authority as soon as he learns of it, shall be punished with a prison term of 15 days to one year and/or a fine of 250 to 50,000 zaires.

If the offender is a person vested with public authority, the prison term shall be six months to two years and the fine 5,000 to 100,000 zaires (art. 6).

30. As can be observed, Zairian legislation predating the Convention fully meets concerns about the elimination of all forms of discrimination. This places Zaire in the forefront of countries determined to eliminate all forms of racial discrimination.

31. Zaire has already communicated the various above-mentioned texts to the Secretary-General by its note No. 132.51/MPZ/A2/030/95 of 26 April 1995. Annexed to the present report* are copies of the Constitutional Act of the transition period, as amended; Decree No. 018 of 8 May 1995; and circulars Nos. 007 of 27 December 1995 and 008 of 15 January 1996, issued by the Minister of Justice and Keeper of the Seals, each relating to the maintenance of amigos and other detention centres.

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* The annex is available for consultation in the Secretariat's files.

Article 5

32. Zairian social order rests on the ideals of freedom, equality and justice contained in title II of the Constitution, which concerns the fundamental rights and duties of citizens. We have already referred to legislation prohibiting all forms of racial discrimination. The following are some instances of legislation guaranteeing equality before the law:

(a) The right to equal treatment before the tribunals and all other organs administering justice

33. This principle is embodied in article 11 of the Constitutional Act, which reads as follows:

> "All Zairians are equal before the law and are entitled to equal protection by the law. No Zairian may, in matters of education or access to the civil service or in any other matter, be the object of discriminatory treatment, whether as a result of a law or of an act of the executive, by reason of his religion, racial or ethnic origin, sex, place of birth, place of residence or political beliefs."

This provision is complemented by article 27 of the same Act, which proclaims the equality of Zairians in law and in dignity and punishes any act that grants privileges to nationals or limits their rights by reason of their ethnic, tribal or regional origin, political or philosophical opinion, religion or sex.

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

34. Article 9 of the Constitutional Act is worded as follows:

> "The human being is sacred. The State has the obligation to respect and protect it. Every individual has the right to life and physical integrity. No one may be subjected to torture or inhuman or degrading treatment. No one may be put to death except as provided by law and in the forms prescribed thereby."

35. Since independence, there has been no corporal punishment in Zaire.

36. Respect for the person and for human life has led the legislature to enact a number of penal laws to that effect. The following articles of the Penal Code are particularly noteworthy:

Articles 43-51, which define and punish homicide, intentional bodily harm and violence. Punishment ranges from imprisonment to death;

Articles 52-56, which define and punish homicide, unintentional bodily harm and violence. The maximum penalty is two years' imprisonment;

Articles 57-62, which make death the maximum penalty for superstitious acts and barbaric practices;

Articles 63-66, which punish duels with a prison term not exceeding five years;

Articles 62 bis-66 quinquies, which punish failure to aid a person in danger. The penalty is a prison term of up to three years;

Articles 156-158, which impose the death penalty for any association formed in order to attack people or property;

Articles 165-174 bis, which punish indecent assault, immoral acts and rape. Offenders may incur the death penalty;

Article 180, which punishes any arbitrary act or act infringing the freedoms and rights guaranteed to individuals which is ordered or carried out by a public official or officer, by a person or agent vested with public authority or by a law enforcement officer.

37. These texts apply both to individuals and to State officials and agents, and the latter case is often put forward as an aggravating personal circumstance.

(c) Political rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service

38. Under article 6 of the Constitutional Act, suffrage is universal. It may be direct or indirect. All Zairians, both male and female, aged 18 years and over and enjoying their civil and political rights, are electors under the conditions determined by law.

39. Article 11 stipulates that no Zairian may, in matters of access to the civil service or in any other matter, be the object of discriminatory treatment, whether as a result of a law or of an act of the executive, by reason of religion, racial or ethnic origin, sex, place of birth, place of residence or political beliefs.

40. These provisions are consistent with Electoral Act No. 82/007 of 25 February 1982, article 15 of which permits all Zairians, both male and female, aged 25 years or over, to be candidates and to be elected at all levels. However, detainees, persons confined for mental illness, persons deprived of their civil and political rights and those residing abroad may not vote (art. 14). Likewise, persons excluded from the electorate (art. 14) and persons sentenced to more than one year of imprisonment for violations of ordinary law are also ineligible to vote.

41. It should be noted that the transitional period will come to an end following elections at all levels and that a new electoral law is being drafted.

42. Access to the different levels of public service is governed solely by the criteria of available vacant posts; seniority in a subordinate post; and individual competence (or merit) (art. 66 of the State Public Service Career Personnel Statute).

(d) Other civil rights, in particular those enumerated under article 5 (d), (i)-(ix) of the Convention

43. The right to freedom of movement is guaranteed by article 10 of the Constitutional Act. Article 13 declares the freedom of the human person to be inviolable.

44. No one may be arrested except by virtue of the law, and in the manner therein prescribed. Disregard of this provision has been treated as arbitrary arrest which, under article 67 of the Penal Code, is subject to penalties ranging from imprisonment to death.

45. Every person who is deprived of his liberty by arrest or detention has the right:

To take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful (art. 14 of the Constitution);

To be immediately informed, in a language he understands, of the reasons for his arrest (art. 15);

To demand and receive fair compensation for any harm caused by unlawful arrest (art. 15);

To have legal assistance, and to be tried in the presence of a lawyer of his own choosing (art. 15);

Freely to choose his residence within a State (region).

46. Ministerial circulars Nos. 007 of 27 December 1995 and 008 of 15 January 1996 regulate the weekly inspection of amigos* and other detention centres, as well as disciplinary and legal action against those who engage in hostage-taking and other irregular forms of detention.

47. Under article 26 of the Constitutional Act, every Zairian has the right freely to establish his domicile or residence in any part of Zairian territory and to enjoy there all the rights recognized by law. This right may be limited only by law and in the cases determined thereby.

48. The Decree of 8 August 1959, which is rarely applied, had established as a measure of social defence the obligation to stay away from certain places or a certain region, or to reside in a given location for a maximum period of one year. These measures were pronounced by the courts and tribunals either as a substitute for penalties attaching to offences they were trying, or as

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* See para. 31 supra.

measures complementary to penalties laid down (arts. 14 and 14 (b) of the Penal Code). In addition to article 26, reference should be made to articles 11 and 27, which have already been cited at length.

49. As to the right to leave any country, including one's own, articles 10 and 13 protect the liberty of the human person and guarantee freedom of movement and enterprise. The exercise of these rights may lead an individual to leave Zaire. Article 33 of the Constitution obliges the State to protect the legitimate rights and interests of Zairians residing abroad. This provision allows all Zairians to leave and return to the national territory. The formalities for obtaining prior authorization from the Ministry of Foreign Affairs have just been abolished. The right to return to one's own country is also proclaimed in article 26, under which no Zairian may be expelled from the national territory. The same article stipulates that no Zairian may be compelled, for political reasons, to reside outside his normal place of residence or in exile.

50. The right to a nationality is guaranteed by article 8 of the Constitutional Act and by the Family Code Act No. 87/010 of 1 August 1987. Although it is possible to lose one's nationality, it is always possible to recover it.

51. The right to marriage and choice of spouse is proclaimed in article 20 of the Constitutional Act and is also embodied in article 334 of the Family Code.

52. Individual or collective property rights are guaranteed by article 22 of the Constitutional Act. These rights may be derogated from only by law, in the general interest, and subject to prior and equitable compensation to the injured owner.

53. The right to inherit, which is also contained in article 20, paragraph 4, of the Constitutional Act, is governed by articles 755-931 of the Family Code, which deal with succession and gifts.

54. The right to freedom of thought, conscience and religion is guaranteed by article 17 of the Constitution. Under article 179 of the Penal Code, violations of this right are punishable by two years' imprisonment, without prejudice to the application of the aforementioned Ordinance-Law No. 25/131 of 25 March 1960.

55. The right to freedom of opinion and expression is affirmed in article 18 of the Constitutional Act.

56. The right to freedom of peaceful assembly and association is recognized by article 10 of the above Act.

(e) Economic, social and cultural rights

57. Article 28 of the Constitutional Act proclaims work to be both a right and a sacred duty which entails, as appropriate, the payment of fair and worthy compensation. It is the duty of every Zairian to contribute through his work to the construction and prosperity of the nation. Under article 12 of the Constitution, no one may be required to perform forced or compulsory

labour, except as provided for by law. Since labour is a contract between the employer and the worker, prior to any commitment the latter must determine the terms of salary and remuneration. Under the Labour Code, lay-offs carried out in the employer's interests must start with the most recently recruited workers, with the assistance of the authorities (art. 64).

58. Article 10 proclaims the freedom of enterprise, association and assembly. Article 28 affirms the worker's freedom to belong to the trade union of his choice, thereby establishing trade-union pluralism.

59. The right to housing is not a constitutional right. It is established by article 117 of the Labour Code, under which, should a permanent worker recruited outside his place of employment be unable to obtain adequate housing for himself and for his family with his own means, the employer must provide it.

60. Articles 138-143 of the Labour Code regulate occupational health and safety, while articles 144-150 call for employer-provided medical service. Article 138 stipulates that every establishment must be kept in a constant state of cleanliness and satisfy the conditions of hygiene and security necessary to the health of its personnel. Article 144 obliges every firm or establishment to provide its workers with a medical or health service. These provisions are part of the general framework of article 29 of the Constitution, which stipulates that every person has the right to a safe environment. The State ensures the protection of the environment and the health of the population.

61. Education and vocational training are provided for under articles 5, 181 and 182 of the Labour Code. As of 29 June 1964, Zaire created an entity called the National Vocational Training Institute (INPP). Articles 261-265 of the Labour Code establish workers' education.

62. There is no law which disregards the right to take part in cultural life under equal conditions.

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks

63. We have already cited the texts that prohibit and punish discrimination in such places.

Article 6

64. Under article 34 of the Constitution, foreigners in Zaire enjoy the same rights and freedoms as Zairians. It follows that the prohibition of discriminatory practices or measures benefits both the Zairian and the foreigner living in Zaire.

65. The Zairian judicial system, both in terms of judicial organization and competence and of procedure, makes no distinction between the national (Zairian) and the foreigner. The various rules apply as much to foreigners as to Zairians.

66. We have already stated that our criminal law penalizes all discriminatory practices or practices liable to lead to racial, ethnic or other forms of discrimination. Every person, whether Zairian or foreign, who is the victim of a discriminatory practice may obtain compensation for the damage suffered by applying to the courts and tribunals, without prejudice to the imposition of penalties, and the courts and tribunals are obliged to decide on the offences without prejudice to any civil compensation awarded subsequent to the commission of those offences. Furthermore, if the discriminatory act originates from a public authority, the victim may request and obtain its annulment, with damages, either by the Court of Appeal or by the Supreme Court of Justice, depending on whether the act originated from a regional or a central authority.

67. The independence of the judiciary does not permit other State organs to interfere in the judicial process or to influence judicial decisions.

Article 7

68. Under article 35 of the Constitution, the State has a duty to ensure the dissemination of, and information on, the Universal Declaration of Human Rights, the African Charter on Human and People's Rights and all duly ratified international human rights instruments.

69. The State has an obligation to include human rights in all training programmes for the schools, the armed forces and the security services. Independently of this provision, university law courses include teaching on constitutional rights and human rights. The principles of human rights are taught at schools for the army, the gendarmerie and the civil guard.